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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)

Implementation of the Pay Telephone)
Reclassification and Compensation)
Provisions of the Telecommunications)
Act of 1996)

CC Docket No. 96-128

OPPOSITION OF THE
AMERICAN PUBLIC COMMUNICATIONS COUNCIL
TO POCKETSCIENCE'S
PETITION FOR CLARIFICATION

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Communications Council

July 7, 1999

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Pursuant to the Common Carrier Bureau's Public Notice, DA 99-1266, released June 25, 1999, the American Public Communications Council ("APCC") hereby opposes PocketScience's petition for reconsideration of the Third Report and Order, FCC 99-7, released February 4, 1999.¹

¹ See also Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order 11 FCC Rcd 20541 (1996); Order on Reconsideration, 11 FCC Rcd at 21233 (1996) (together the "Payphone Orders"). The Payphone Orders were affirmed in part and vacated in part. See Illinois Public Telecom. Ass'n v. FCC, 117 F.3d 555 (D.C. Cir. 1997). See also, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Second Report and Order, 13 FCC Rcd 1778 (1997); remanded, MCI Telecomm. Corp. v. FCC, No. 97-1675 (D.C. Cir. May 15, 1998).

I. PER-CALL COMPENSATION DOES NOT INVOLVE AN IMPROPER SUBSIDY

PocketScience argues that per-call compensation inappropriately uses dial-around compensation earned at high-volume payphones to subsidize payphones at low-volume locations. PocketScience claims that such a subsidy violates Section 276 of the Act. 47 U.S.C. §276.

To begin with, PocketScience does not demonstrate that major subsidies will result from a per-call compensation plan. In fact, as explained by APCC's economic experts, Haring and Rohlf's of Strategic Policy Research, the tendency of the competitive payphone market is to eliminate the opportunities for supracompetitive profits at payphones. As competition increases, PSPs compete to place more payphones in areas that generate substantial payphone traffic, thereby reducing the average per-phone traffic volume in these areas. See Comments of the American Public communications Council, filed July 13, 1998, Exhibit 1. In the absence of opportunities to earn revenues that exceed economic cost, there will not be sufficient resources to subsidize low-volume payphones.

Even to the extent that there do remain some opportunities to use high-volume payphones to subsidize low-volume payphones, it does not follow that the Commission should reconsider its per-call compensation scheme. Section 276 prohibits the use of *local exchange* or *exchange access* revenue to subsidize payphone service, but says nothing about prohibiting the use of one *payphone's* revenue to subsidize another payphone. Indeed, Section 276 requires the Commission to adopt regulations that "ensure widespread deployment of payphone services." If per-call compensation enables PSPs serving high-volume locations to place more payphones in lower-volume locations that would not otherwise support a payphone, then the purposes of the Act have been served.

In any event, PocketScience does not propose a workable alternative to eliminate inter-payphone subsidies. PocketScience would have the Commission classify payphones in “tiers” based on average payphone usage, and apply different compensation rates to each tier. However, any such attempt at classification would involve the Commission in more extensive regulation and would be subject to endless disputes. For a variety of reasons, a payphone may experience fluctuations in call volume from one month to another or one year to another. Thus, a payphone generating 50 dial-around calls in January could easily generate 100 (or 25) calls the following month. In addition, carriers and PSPs are unlikely to agree on an “objective” method of measuring call volume. PocketScience has not proposed any satisfactory method of addressing these issues.

II. IT IS PREMATURE FOR THE COMMISSION TO REPLACE THE CURRENT PER-CALL RATE WITH A DURATIONAL RATE

PocketScience alternatively contends that the per-call compensation rate should be replaced with a durational (e.g., per 6-second increment) rate, in order to eliminate what PocketScience claims is a disproportionate cost burden that has increased PocketScience’s costs for a 40-second call from four cents to 28 cents.

While a durational compensation rate is not an inherently unreasonable rate structure, it is not necessarily more economically efficient than a per-call rate, given that most payphone costs are fixed and do not vary on a per-call *or* durational basis. Thus, the “burden” on PocketScience caused by per-call compensation is not an unreasonable one: it is “disproportionate” only to the costs incurred by PocketScience prior to the implementation of per-call payphone compensation. Since PocketScience apparently built its business on the use of payphones, under the mistaken impression that it could

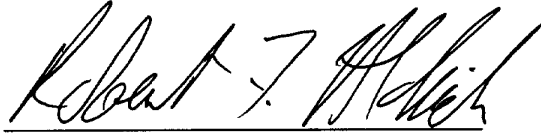
indefinitely avoid any payments for such use, PocketScience and its customers are entitled to no special dispensation from the Commission.

As to the merits of durational compensation, it would substantially increase the complexity of the payment system. Therefore, it should not be considered until the industry has had sufficient experience with successful implementation of a per-call system (including improvement and implementation of tracking and payment responsibilities). The Commission should remember that proposals for a durational rate are not new. The Commission considered a durational rate of payphone compensation in 1991, but ultimately rejected it as unworkable.² Given the several years that it took the industry to move to a per-call compensation system, which was ultimately mandated by statute, there is no reason to believe that a compensation system that is based on a handful of seconds of usage would be technically and administratively possible to achieve in the near future. Should such a per-increment compensation system be practicable in the future, without jeopardizing the compensation flows to which PSPs have long been entitled, the Commission will have the discretion to open a new proceeding to explore such possibilities.

² Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91-35, Report and Order and Further Notice of Proposed Rulemaking, 6 FCC Rcd 4736, 4747 (1991).

Dated: July 7, 1999

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert F. Aldrich", written over a horizontal line.

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